
(2000) 04 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 23273-M of 1999

Thapar Agro Mills

APPELLANT

Vs

Haryana State Industrial Development Corporation

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22

Citation : (2000) 3 CivCC 74 : (2001) 107 CompCas 483 : (2000) 3 RCR(Criminal) 191

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Rajesh Khurana, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Bakhshish Kaur, J.—This order will dispose of Criminal Miscellaneous Petitions Nos. 23253-M, 23257-M, 23261-M, 23265-M and 23269-M of 1999 as similar facts are involved therein as in this Criminal Miscellaneous No. 23273-M of 1999. The facts are taken from Criminal Miscellaneous No. 23273-M of 1999.

2. Haryana State Industrial Development Corporation (hereinafter referred to as "the Corporation") filed a complaint u/s 138 read with Section 141 of the Negotiable Instruments Act, 1881, as amended from time to time (in short "the Act"), for the prosecution of the accused, now the petitioners.

3. The facts culminating into the complaint briefly stated are that M/s. Thapar Agro Mills-accused No. 1 availed of a project loan of Rs. 100 lakhs on July 8, 1994, which was valid up to September 30, 1994. The accused failed to repay the loan. The complainant secured a recovery certificate for recovery of the amount, through the District Collector, Haryana, and when the recovery certificate was about to be executed, the accused approached the Corporation for reconsideration of the matter. Prior to taking of the recovery certificate from the District Collector, the accused was served with the notice thereby demanding the

money of Rs. 100 lakhs along with interest amounting to Rs. 4,30,822. The accused was requested to clear the payment by September 30, 1994, but it had no effect on the accused in spite of the demand notice, fax messages issued to him. A registered notice was ultimately sent, but there was no reply.

4. When the recovery certificate was to be executed, the accused, i.e., M/s. Thapar Agro Mills and Satish Thapar, managing director and chairman of M/s. Thapar Agro Mills issued cheque No. RGE 142527, dated September 20, 1995, for Rs. 6.25 lakhs and cheques bearing Nos. 142519, dated May 20, 1995, 142521, dated June 20, 1995, 142523, dated July 20, 1995, 142524, dated August 5, 1995, 142525, dated August 20, 1995, and 142526, dated September 5, 1995. These cheques were dishonoured except cheque No. 145520, dated June 19, 1995, for Rs. 6.25 lakhs which has been cleared.

5. Criminal complaints were Filed u/s 138 read with Section 141 of the Act against M/s. Thapar Agro Mills and its managing-director-cum chairman Mr. Satish Thapar. In response to the summons issued by the trial court after recording preliminary evidence, the accused appeared before the court and filed an application u/s 245 of the Criminal Procedure Code for the dismissal of the complaint.

6. Finding no merit in the application for the dismissal of the complaint or the discharge of the accused, the trial court dismissed the application on November 2, 1998. The revision petition u/s 397 of the Code preferred against this order met the same fate. The petitioner has, therefore, invoked the inherent jurisdiction of this court by filing a petition u/s 482 of the Criminal Procedure Code, and seeks quashing of the complaint and all consequent proceedings flowing therefrom as also the orders annexures P-2 and P-3.

7. I have heard Mr. Rajesh Khurana, learned counsel for the petitioner and Mr. B.R. Gupta, learned counsel for the respondent. At the very outset, learned counsel for the petitioner contended that the accused-company has been registered with the Board for Industrial and Financial Reconstruction (in short "BIFR") and an enquiry was held by the BIFR u/s 16(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, and accordingly, the company has been declared sick. Consequently, the provisions of Section 17 of the Companies Act, prohibit the continuation of proceedings u/s 138 of the Act.

8. The mere fact that the company had been a sick industrial unit is no ground to quash the complaint u/s 138 of the Act as is held in *M.M. Rajagaria v. State of Punjab* [1995] 1 CCC 8 (P &H). My attention is also drawn by Mr. B.R. Gupta, learned counsel appearing for the respondent to *B. Mohan Krishna v. Union of India* [1995] 1 C C C 480 (AP); [1996] 86 Comp Cas 487, wherein it has been held that the prosecution of the company for an offence u/s 138 of the Act is not prohibited by Section 17 of the Sick Industrial Companies (Special Provisions) Act.

9. Thus the petitioner cannot take the protection of Section 17 of the Sick

Industrial Companies (Special Provisions) Act to contend that no proceedings should continue against the petitioner u/s 138 of the Act. In *Rajesh Bajaj Vs. State NCT of Delhi and Others*, it has been held by their Lordships of the Supreme Court that the inherent powers could be exercised to further the object of the enactment of the Negotiable Instruments Act. In effectual foundation for the offence has been laid down in the complaint and it is too early to say that the complaint u/s 138 of the Act cannot proceed or that the case for the discharge of the petitioner is made out.

10. Mr. Rajesh Khurana, learned counsel for the petitioner had also tried to derive benefit from an order annexure P-7 passed by the Delhi High Court in Criminal Miscellaneous (M) Nos. 300 and 616 of 1999, which reads as under :

"Learned counsel for the petitioner has pointed out that a petition involving similar points being criminal appeal arising out of SLP (Criminal) No. 31194 of 1998 has been admitted for hearing on January 4, 1999.

As agreed this be listed on April 20, 1999, along with CrI. M. (M) No. 4481 of 1998.

In the meantime, proceedings before the trial court shall remain stayed."

11. On the strength of these orders annexures P-7, P-5 and P-6 it is urged that the proceedings before the trial court be stayed. Whether the points urged in the petition referred to in the aforesaid orders are the similar or not to those which arise in the present complaint instituted by the respondents against the petitioner is a question of fact and this fact cannot be gone into while deciding a petition u/s 482 of the Criminal Procedure Code whereby the petitioner seeks relief quashing of the complaint and orders passed by the courts below. Complaint No. 243 of 1995 annexure P-1 is pending before the trial court since 1995. The respondents in their written statement have mentioned that the case in the trial court is already fixed for recording the statement of the accused u/s 313 of the Criminal Procedure Code. If this is the position that the case is already at the stage of recording statement u/s 313 of the Code, then the petitioners are at liberty to raise all these pleas before the trial court as the case appears to be ripe for disposal.

12. Thus, under these circumstances, I am of the considered view that no case is made out for interfering with the impugned orders.

13. Mr. B.R. Gupta has also questioned the maintainability of the petition u/s 482 of the Code on the premise that the revision petition u/s 397 of the Code filed by the petitioner against the order of the trial court passed u/s 245 of the Code was dismissed, therefore, the petition u/s 482 of the Code is not maintainable. He has placed reliance on *Shiv Kumar v. Ramesh Chand* [1994] 1 RCR 142. It is held that where a bar of Section 397(2) of the Criminal Procedure Code, is attracted, the same cannot be circumvented by invoking the inherent powers of the High Court. In *Rajan Kumar Manchanda v. State of Karnataka* [1998] 2 RCR 662, a

revision against the order of the magistrate was dismissed by the Sessions Court and it was held that second revision in the High Court invoking the inherent powers of the court u/s 482 of the Code is not maintainable as it is barred by Section 397(2) of the Code. It is true that a second revision petition does not lie before the High Court where one is dismissed by the Court of Session. Still the Court, of Session is a court subordinate to the High Court and as such, the proceedings are open to scrutiny by the High Court in exercise of its inherent power u/s 482 of the Criminal Procedure Code as has been held in *Jitender Kumar Jain v. State of Delhi* [1999] SCC77.

14. From the averments in the complaint, whereby ineffectual foundation for the offence has been laid in the complaint, the court should not hasten to quash the criminal proceedings. It is well settled that for quashing the first information report/complaint, which is permitted only in an extremely rare case, the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence, as is held in *Rajesh Bajaj Vs. State NCT of Delhi and Others*, . Similarly in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , it has been held that the court will not be justified in embarking upon an enquiry as to the reliability or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice. The powers of quashing a criminal complaint should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

15. Considering the aforesaid facts, no case is made out for quashing the impugned complaint annexure P-1 as also the impugned orders, as the impugned orders cannot be termed as illegal.

16. Resultantly, Criminal Miscellaneous Nos. 23273-M, 23253-M, 23257-M, 23261-M, 23265-M and Criminal Miscellaneous No. 23269 of 1999 are dismissed. The parties through their counsel are directed to appear before the trial court on May 12, 2000.